

CHAPTER 881

TRUST FUND INVESTMENTS

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Cross-reference: See definitions in ch. 851.

881.01 Uniform prudent investor act. (1) DEFINITIONS.

In this section:

- (a) “Beneficiary” means any of the following:
1. With respect to a will, a beneficiary, as defined in s. 851.03.
 2. With respect to a trust, a beneficiary, as defined in s. 701.0103 (3).
 3. With respect to guardianship of the estate, a ward for whom a guardian of the estate has been appointed.
 4. With respect to a conservatorship, a person for whose estate a conservator has been appointed.
- (b) “Fiduciary” means a personal representative, trustee, conservator, guardian of the estate, a directing party, as defined in s. 701.0103 (7), who has the power to direct the trustee’s investment decisions, a trust protector, as defined in s. 701.0103 (31), who has a power exercisable in a fiduciary capacity over the investment of trust assets, and any other person to whom a court appoints a power over the investment of the assets of a decedent’s estate, a trust, a conservatorship, or a guardianship of the estate.

NOTE: Sub. (1) is shown as affected eff. 7–1–14 by 2013 Wis. Act 92. Prior to 7–1–14 it reads:

(1) DEFINITION. In this section:

(a) “Beneficiary,” with respect to a guardianship of the estate, means a ward for whom a guardian of the estate has been appointed and, with respect to a conservator, means a person for whose estate a conservator has been appointed.

(b) “Fiduciary” means a personal representative, trustee, conservator, or guardian of the estate.

(2) PRUDENT INVESTOR RULE. (a) Except as provided in s. 112.11 and except as otherwise provided in par. (b), a fiduciary who invests and manages assets owes a duty to the beneficiaries to comply with the prudent investor rule set forth in this section.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a will, trust, or court order. A fiduciary is not liable to a beneficiary to the extent that the fiduciary acted in reasonable reliance on the provisions of the will, trust, or court order.

(3) STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) A fiduciary shall invest and manage assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the estate, trust, conservatorship, or guardianship. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution.

(b) A fiduciary’s investment and management decisions about individual assets shall be evaluated, not in isolation but in the context of the portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the estate, trust, conservatorship, or guardianship.

(c) Among circumstances that a fiduciary shall consider in investing and managing assets are those of the following that are relevant to the estate, trust, conservatorship, or guardianship of its beneficiaries:

1. General economic conditions.
2. The possible effect of inflation or deflation.

3. The expected tax consequences of investment decisions or strategies.

4. The role that each investment or course of action plays within the overall portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property.

5. The expected total return from income and the appreciation of capital.

6. Other resources of the beneficiaries.

7. Needs for liquidity, regularity of income, and preservation or appreciation of capital.

8. An asset’s special relationship or special value to the purposes of the estate, trust, conservatorship, or guardianship or to one or more of the beneficiaries.

(d) A fiduciary shall make a reasonable effort to verify facts relevant to the investment and management of assets.

(e) A fiduciary may invest in any kind of property or type of investment consistent with the standards of this section.

(f) A fiduciary who has special skills or expertise, or who is named fiduciary in reliance upon the fiduciary’s representation that the fiduciary has special skills or expertise, has a duty to use those special skills or expertise.

(4) DIVERSIFICATION. (a) *General rule.* A fiduciary shall diversify investments unless the fiduciary reasonably determines that because of special circumstances the purposes of the estate, trust, conservatorship, or guardianship are better served without diversifying.

(b) *Special rule for assets collected by a fiduciary.* 1. For purposes of this paragraph, an “asset that is collected by the fiduciary” means an asset that the fiduciary did not exercise discretion over to acquire or purchase.

2. Notwithstanding par. (a), a fiduciary may retain an asset that is collected by the fiduciary until the fiduciary reasonably determines that it is advisable to dispose of the asset. While the asset is being retained, the fiduciary has a duty to exercise discretion at reasonable intervals to determine the advisability of continuing to retain or disposing of the asset that was collected.

3. At any time while an asset that is collected by the fiduciary is being retained, a beneficiary may file an application with a court that has jurisdiction over the fiduciary to compel the fiduciary to sell the asset and invest the sale proceeds in accordance with this section.

4. If a beneficiary files an application under subd. 3., the court shall conduct a hearing after giving notice to all interested persons, as determined by the court. After the hearing, the court shall enter an order directing the fiduciary to retain or sell the asset that is being retained based on what the court finds to be in accordance with the terms and purposes of the estate, trust, conservatorship, or guardianship of the estate and the interests of the beneficiaries.

NOTE: Sub. (4) is shown as affected eff. 7–1–14 by 2013 Wis. Act 92. Prior to 7–1–14 it reads:

(4) DIVERSIFICATION. A fiduciary shall diversify investments unless the fiduciary reasonably determines that, because of special circumstances, the purposes of the estate, trust, conservatorship, or guardianship are better served without diversifying.

(5) **DUTIES AT INCEPTION.** Within a reasonable time after accepting a fiduciary appointment or receiving assets, a fiduciary shall review the assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the estate, trust, conservatorship, or guardianship and with the requirements of this section.

(6) **LOYALTY.** A fiduciary shall invest and manage the assets solely in the interest of the beneficiaries.

(7) **IMPARTIALITY.** If an estate, trust, conservatorship, or guardianship has 2 or more beneficiaries, the fiduciary shall act impartially in investing and managing the assets, taking into account the differences between the interests of the beneficiaries.

(8) **INVESTMENT COSTS.** In investing and managing assets, a fiduciary may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the estate, trust, conservatorship, or guardianship, and the skills of the fiduciary.

(9) **REVIEWING COMPLIANCE.** Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a fiduciary's decision or action and not by hindsight.

(10) **DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.** (a) A fiduciary may delegate investment and management functions that a prudent fiduciary of similar skills could properly delegate under the circumstances. The fiduciary shall exercise reasonable care, skill, and caution in all of the following:

1. Selecting an agent.
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the estate, trust, conservatorship, or guardianship.
3. Periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the estate, trust, conservatorship, or guardianship to exercise reasonable care to comply with the terms of the delegation.

(c) A fiduciary who complies with the requirements of par. (a) is not liable to the beneficiaries or to the estate, trust, conservatorship, or guardianship for the decisions or actions of the agent to whom a function was delegated.

(d) By accepting the delegation of a function from the fiduciary of an estate, trust, conservatorship, or guardianship that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(11) **PHRASES INVOKING STANDARD OF THIS SECTION.** The following phrases or similar phrases in a will, trust, or court order, unless otherwise limited or modified, authorize any investment or strategy permitted under this section: "investments permissible by law for investment of trust funds"; "legal investments"; "authorized investments"; "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital"; "prudent man rule"; "prudent trustee rule"; "prudent person rule"; and "prudent investor rule."

(12) **APPLICATION TO EXISTING ESTATES, TRUSTS, CONSERVATORSHIPS, AND GUARDIANSHIPS.** This section applies to estates, trusts, conservatorships, and guardianships of the estate existing on, or created on or after, April 30, 2004. As applied to estates, trusts, conservatorships, and guardianships of the estate existing on April 30, 2004, this section governs only decisions or actions occurring after that date.

(13) **UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this

section among the states that have enacted this uniform legislation.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.01; 1973 c. 85; 1975 c. 94 s. 91 (12); 1975 c. 200; 1983 a. 27; 1987 a. 220; 1989 a. 300; 1995 a. 225, 273; 2003 a. 264, 326; 2009 a. 33; 2013 a. 92.

An administrator's duty to manage an estate as a prudent person ordinarily includes a duty to reasonably invest estate funds not needed for claims or expenses. A court properly imposed a surcharge against an administrator who breached the duty by allowing estate funds to lie idle in noninterest bearing checking accounts. *Estate of Kugler*, 117 Wis. 2d 314, 344 N.W.2d 160 (1984).

881.015 Investment companies, investment trusts and collective investment vehicles. (1) In this section:

(a) "Collective investment vehicle" means an investment vehicle authorized for the collective investment of trust funds, including vehicles under 12 CFR 9.

(b) "Investment company" means an open-end or closed-end management investment company registered under 15 USC 80a-1 to 80a-64.

(c) "Investment trust" means an investment trust registered under 15 USC 80a-1 to 80a-64.

(2) In addition to other investments authorized by law for the investment of funds held by a fiduciary, or by the instrument governing the fiduciary relationship, a bank or trust company acting as a fiduciary, agent or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as fiduciary, invest and reinvest in the securities of, or other interests in, an investment company, investment trust or collective investment vehicle, so long as the portfolio of the investment company, investment trust or collective investment vehicle consists of investments not prohibited by the governing instrument. In the absence of an express provision to the contrary, when a governing instrument directs or requires investment in obligations of the U.S. government or an agency of the U.S. government, a bank, trust company, trust department trustee or other fiduciary may invest in these obligations either directly or in the form of securities of, or other interests in, an investment company, investment trust or collective investment vehicle, if the portfolio of the investment company, investment trust or collective investment vehicle consists of obligations of the U.S. government or an agency of the U.S. government and repurchase agreements fully collateralized by these obligations.

(3) If the requirements of this subsection are met, a bank or trust company may invest or reinvest funds under sub. (2) in the securities of, or other interests in, an investment company, investment trust or collective investment vehicle, notwithstanding the fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company, investment trust or collective investment vehicle such as those of an investment adviser, custodian, transfer agent, broker, registrar, paying agent, sponsor, distributor, administrator, manager or otherwise and receives compensation for those services. In order to invest or reinvest funds under sub. (2) in the securities of, or other interests in, the investment company, investment trust or collective investment vehicle for which the bank, trust company or affiliate provides services, the bank, trust company or affiliate shall disclose in writing the basis upon which any compensation for such services is calculated, whether expressed as a percentage of asset value or otherwise. The disclosure shall be made by prospectus, account statement or otherwise and shall be delivered, at least annually, to all persons to whom statements of account for the invested or reinvested funds are provided.

History: 1995 a. 273.

881.016 Employees and agents of a fiduciary. Unless prohibited by the terms of the instrument governing a fiduciary relationship, a fiduciary may employ attorneys, accountants, investment advisers, agents or other persons, even if they are associated with the fiduciary, to advise or assist the fiduciary in the performance of the fiduciary's duties. The fiduciary may act without independent investigation upon their recommendations or,

3 Updated 11–12 Wis. Stats.

instead of acting directly, employ one or more agents to perform any act of administration, whether or not discretionary. If the terms of the governing instrument do not address the authority of the fiduciary to delegate the fiduciary's duties, all of the following apply:

(1) The fiduciary may delegate some, but not all, of the fiduciary's duties to an agent.

(2) The employment of an agent by the fiduciary does not relieve the fiduciary of liability for acts of the agent that, if done by the fiduciary, would result in the liability of the fiduciary.

(3) The employment of an agent by a fiduciary does not relieve the fiduciary of the fiduciary's duty to use reasonable care in selecting and retaining the agent.

History: 1995 a. 273.

881.02 Construction; court orders; written instruments. Nothing contained in this chapter shall be construed as authorizing any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 881.02; 1995 a. 273; 2003 a. 264.

881.03 Jurisdiction of court. Nothing contained in this chapter shall be construed to affect the power or jurisdiction of any court of the state of Wisconsin in respect to trusts and trustees, nor as restricting the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.03.

881.04 Investments under prior laws not affected. Nothing contained in this chapter shall affect any investment

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made prior to the enactment hereof or any amendment hereof or affect any rights or interests established, accrued or created thereunder or affect any suit or action pending when this chapter or any amendment hereof becomes effective.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.04.

881.05 Retention of securities by trustees. (1) Unless the trust instrument or a court order specifically directs otherwise, a trustee shall not be required to dispose of any property, real or personal, or mixed, in the estate or trust, however acquired, until the trustee determines in the exercise of a sound discretion that it is advisable to dispose of the same; but nothing herein contained shall excuse the trustee from the duty to exercise discretion at reasonable intervals and to determine at such times the advisability of retaining or disposing of such property.

(2) Any heir or beneficiary shall have the right at any time to file an application with the court in which said estate or trust is being administered for the purpose of compelling the sale of such property so held, and to compel the investment of the proceeds in other investments which are in accordance with this chapter. Upon the filing of such application said court shall conduct a hearing, after giving to all persons interested in said estate or trust such notice as shall be designated by said court, and upon such hearing said court shall enter an order thereon directing the retention or sale of such property as may be for the best interests of said estate or trust.

NOTE: This section is repealed eff. 7–1–14 by 2013 Wis. Act 92.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.05; 2013 a. 92.

881.06 Law governing existing instruments. Subject to s. 881.01 (12), this chapter shall govern fiduciaries, including personal representatives, guardians of the estate, conservators, and trustees acting under wills, agreements, court orders, and other instruments now existing or hereafter made.

History: 1971 c. 41 s. 8; Stats. 1971 s. 881.06; 1975 c. 200; 2003 a. 264.